

Vol. II
TRANSCRIPT OF RECORD

(Pages 535 to 1050)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 428

**PENNSYLVANIA WATER AND POWER COMPANY
AND SUSQUEHANNA TRANSMISSION COMPANY
OF MARYLAND, PETITIONERS,**

vs.

FEDERAL POWER COMMISSION ET AL.

No. 429

**PENNSYLVANIA PUBLIC UTILITY COMMISSION,
PETITIONER,**

vs.

FEDERAL POWER COMMISSION

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PETITIONS FOR CERTIORARI FILED NOVEMBER 16, 1951

CERTIORARI GRANTED FEBRUARY 4, 1952

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[2388]

GEORGE W. SPAULDING.

CROSS-EXAMINATION.

By MR. GOLDBERG:

[2391] Q. Did I understand you to say that Exhibit 72 in this proceeding, which I now hand you, provides for the delivery of electric energy to Penn Water by Metropolitan Edison? A. Provides for the interchange arrangements whereby Penn Water has and does and is receiving energy and other interchange services, frequently of a capacity nature, from Metropolitan Edison—yes, sir.

Q. Would you say Penn Water and Safe Harbor receive that electric energy? A. Safe Harbor is not a named party to this contract.

Q. Aside from the fact it is not a named party would you say that it receives electric energy from Metropolitan Edison under Exhibit 72? A. No, I would not say it did.

Q. Suppose it were a named party? Would you say that it did? A. I would; yes.

Q. Did I understand you correctly? Did you say that Pennsylvania Power and Light Company, under Exhibits 76 and 77 furnishes electric energy to Safe Harbor and Penn Water? A. I think so.

Q. Will you point out the provisions? A. Article Roman numeral VIII of Exhibit 76 being the Lancaster Power Supply contract of May 1, 1933, between [2392] Pennsylvania Power and Light and Penn Water and Safe Harbor provides that interconnection and parallel operation will be undertaken as promptly as possible and that arrangements will then be made for an equitable division of the cost of any changes in the facilities, etc.

Exhibit 77, which is a letter agreement of April 28, 1939, between Pennsylvania Power and Light and Penn Water and Safe Harbor, is a supplement, or an amendment, to Exhibit 76 and provides in paragraph 11 thereof for economy interchange, in paragraph 12 for emergency

interchange, and in paragraph 14 for the joint use of transmission facilities for those purposes.

Q. In other words, the provisions for firm power supply and interchange are part of the same agreements. Is that right? A. They are incorporated in the same contracts; yes.

Q. You just referred to the joint use of transmission facilities.

What transmission facilities of Safe Harbor are jointly used in connection with Exhibits 76 and 77? A. Paragraph 14 reads in part as follows:

“In order to secure the greatest practical benefit”——

Q. Let me interrupt. Paragraph 14 from what exhibit? A. Exhibit 77, which is the letter agreement of April, 1939.

“In order to secure the greatest practical benefit in [2393] the utilization of those tie-in facilities in the Harrisburg and Lancaster areas which may be available to either party providing a path between Generating Companies and Receiving Company in parallel with the path owned by or available to third parties with whom both parties are interconnected.”
—I will not read the rest unless it later becomes necessary.

Those are the facilities providing a path between generating companies and receiving companies, some of them, of course, owned by Safe Harbor and some by Penn Water and some by Pennsylvania Power and Light, and reference is here made to other facilities owned by third parties outside of this contract which are neither owned or operated by any of the parties to the agreement.

Q. Who are the third parties not named in that agreement? A. Metropolitan Edison Company, Edison Light and Power of York, and I believe the Philadelphia Electric Company and the Pennsylvania Railroad.

Q. What facilities of the Pennsylvania Railroad?

A. As I explained a few minutes ago, the interchange of energy and capacity over the facilities of the railroad are of a little different nature in operation from those in any other interconnection agreement. It frequently occurs that Penn Water and Safe Harbor will supply to the Pennsylvania [2394] Railroad Company at Safe Harbor energy and capacity in excess of its "Contractual requirements" which I am using here in a technical sense and not a legal sense, and at such times such electric services are used by the Pennsylvania Railroad to meet its requirements on other sections of its electrified system.

Meters have been installed at several points on the Pennsylvania Railroad's electrified system for the purpose of determining the amount of such excess energy used by the railroad on its other sections and such capacity and energy and other services are accounted for as though sold to the Philadelphia Electric.

When electric services are furnished by the Philadelphia Electric to Penn Water and Safe Harbor in the reverse direction, the principle is just the reverse.

Electric services are furnished by the Philadelphia Electric and used by the railroad to meet its requirements in what we refer to as the contractual load area of Penn Water, Safe Harbor, Consolidated Gas Electric Light and Power Company of Baltimore, and when such services are received and so used by the railroad in that section of their system which is normally supplied from Safe Harbor it is accounted for as being energy and other electrical services delivered by Philadelphia Electric to Pennsylvania Water and Power Company under the interconnection agreement which I indicated [2395] a few minutes ago had not been so far identified in these proceedings.

Q. I didn't hear the description of the facilities of the Pennsylvania Railroad. You spoke about the operations but I didn't hear you describe the precise transmission facilities of the Pennsylvania Railroad. A. I en-

deavored to point out that it is a matter on the one hand of Penn Water and Safe Harbor supplying services to the railroad's transmission system and these being then transmitted or carried by the railroad to whatever part of their system they may desire, and, on the other hand, when Philadelphia Electric Company may supply the railroad services in excess of their contractual requirements the railroad transmits that capacity and energy and other services to the section of the railroad system which is normally supplied from Safe Harbor.

It is in that way that the railroad's facilities are used really by themselves rather than by us, but it forms a parallel path over which, at least for accounting purposes, we directly consider that power flows, energy flows, and other electrical services flow from Penn Water on the one hand to Philadelphia Electric on the other hand.

[2396] Q. I am trying to understand your answer.

You said by "Us", and then you said it was not exact, you were referring to the joint use of facilities in Exhibit 77. I say by whom? A. There are several paths, and by paths, I refer to electric transmission lines, over which electric power, energy and other services are transmitted as interchange between Penn Water and Safe Harbor on the one hand and between their Pennsylvania customers on the other. It becomes necessary for operating purposes to account for the power flows on each of those parallel paths separately. Recognition frequently is given to that fact, that energy and capacity, reactive and other services, may actually be transmitted over one path though finally received by or used by a third party with whom Penn Water and Safe Harbor may have a direct path, but because of electric operations of the integrated systems it is not possible to control the flow of capacity, energy, reactive and other services over the single path between Penn Water and Safe Harbor on the one [2397] hand, for instance, and Pennsylvania Power and Light on the other

but rather some of those services may flow over one or more of the other parallel paths.

[2398] THE WITNESS: I will refer to Exhibit 37. The parallel path you first asked me to describe which includes certain of the railroad's facilities are in part shown on Exhibit 37. Between the main generator bus at Safe Harbor and the railroad's facilities there is, first, a 25,000 K. W. frequency changer which permits conversion of three-phase sixty cycle electric services to 25-cycle single-phase electric services.

In parallel electrically with that frequency changer are two water-wheel generators of approximately 30,000 kilowatt [2399] capacity each, providing for the supply of 25-cycle single phase service.

These three machines are connected by an electric cable system owned by Safe Harbor through the hill to a sub-station owned by Pennsylvania Water and Power Company adjacent to the project boundary of Safe Harbor, and there the service is transformed to 132 K. V. And there are then two paths over which such electric service may flow, the first being toward Thorndale, Pennsylvania, near Coatesville, shown on the upper right-hand portion of Exhibit 37, over facilities owned by the Railroad, and the other path being over transmission lines owned by Pennsylvania Water and Power Company and S. T. Co. of Maryland, toward Perryville, Maryland, shown at the head of Chesapeake Bay about the middle and toward the right-hand side of Exhibit 37.

At that point the transmission lines of Penn Water and the subsidiary interconnect with the transmission network of the Pennsylvania Railroad Company and power may flow to the right or toward Philadelphia and New York.

At the points indicated as Thorndale, Pennsylvania, and Perryville, Maryland, there are installed electric meters for the purpose of determining the amount of

electric energy and other services which flow to that portion of the Pennsylvania Railroad's system not normally supplied by Penn Water and Safe Harbor, and, on the other hand, will meter that power and [2400] energy which flows from the Northern Portion of the Pennsylvania Railroad's transmission system toward that portion of the railroad's system normally supplied by Holtwood and Safe Harbor.

It is the metering of the power and energy at Thorn-dale and Perryville that is used for accounting purposes under the Philadelphia Electric-Penn Water interchange contract which has not yet been identified in these proceedings.

. . .

[2407] Q. With respect to the transaction that you described under which Penn Water, you said, furnishes or stands ready to furnish electric services to Baltimore, will you point to the provisions in Items "H" and "I" covering the rates or charges? A. For such service?

Q. Yes. A. Well, I have just described or endeavored to describe that there are two transactions, and the dollar payments made [2408] or collected by Penn Water are the net dollar result of the two transactions.

Q. You mean by that last statement that in Items "H" and "I" there is not shown a separate rate covering the backfeed transactions? A. Not as such, Mr. Goldberg. You have to go back to the 1927 agreement which I think is Item "H".

Q. Yes. A. And there you find in Article 6 of that 1927 agreement the provisions for the services to be rendered by Electric, as it is referred to in here, meaning Baltimore Company, to Power, and therein meaning Penn Water, under this contract.

Q. Is that still in effect today? A. Yes, sir.

Q. And that is the provision that covers the backfeed by Consolidated to Penn Water? A. Yes, sir.

Q. Where is the rate shown for that? A. There is no rate shown other than the statement, "For all such

energy Power will be billed for the daily net amount of such backfeed at actual costs plus ten per cent."

MR. MYSE: Will you read the entire paragraph? It is very short.

THE WITNESS: Article 6. Heading, Steam Energy Purchased.

"Upon request of Power, Electric will supply to Power steam [2409] generated energy in excess of Electric's own requirements up to the limit of its available generating capacity, provided, however, that Electric is not obligated to start up a station which would not otherwise be operated. For all such energy Power will be billed for the daily net amount of such backfeed at actual costs plus ten per cent, (10%). The costs to be used are those reported on Electric's monthly production statement covering the month during which steam energy was furnished to Power."

By MR. GOLDBERG:

Q. So that the rate, if we may speak of it as such, for the backfeed energy from Consolidated steam electric plants is covered in the provision you just read—right?

A. Yes, sir.

Q. Where are the rates and charges for the transaction whereby in a technical and operating sense Penn Water sells, in your terms, electric service to Consolidated? A. There are no rates in the usual sense of a rate for capacity, a rate for energy, a rate for reactive, a rate for certain specified facilities, but there is a formula incorporated in the contract of June 1, 1931, which is the basis for the payments made for the services rendered, for the net services rendered, by Penn Water to Baltimore on the one hand and by Baltimore to Penn Water on the other.

Q. What article is that in in Item "H"? A. Article III.

[2410] Q. All right. A. I should include or add to that, or at least indicate, that the Article III of the 1931 contract was amended by a contract between the same two parties dated September 29, 1939, which amendment affects the payments to be made under Article III.

Q. Now, you say the Article III of Item "H" and the amendment contained in Item "I" cover the backfeed by Consolidated to Penn Water? A. I think that requires a little additional explanation.

Q. All right. A. The contract of June 1, 1931, set out a method for computing the payments for the services to be rendered by Penn Water to Baltimore Company, and then stated that any matters not specifically covered or contrary to the matters incorporated in the 1927 contract would be continued, with the result that the parties have always considered for accounting and billing purposes that the section referring to steam generated energy to be made available by Baltimore Company to Penn Water was a separate item to be considered in connection with the 1931 contract, and for several years accounting under that separate article, referring to the purchased energy, was continued.

There then was a span of years, particularly after the Safe Harbor plant of the Safe Harbor Water Power Corporation was fully available, when there was no "daily net backfeed". Again, in the late 30's, with the increasing requirements of the [2411] Pennsylvania customers of Penn Water and Safe Harbor requiring more and more of the output of the Safe Harbor and Holtwood developments there was necessarily less energy available to Baltimore Company. As a corollary during extreme low flow periods, and particularly on Sundays, there was a daily net backfeed from Baltimore Company to Penn Water to supplement the services provided by Penn Water and Safe Harbor to their Pennsylvania customers.

The operating committee, set up under provisions of Item "H", of which I am the member for Penn Water

and Safe Harbor, considered the question of accounting for "daily net backfeed", and, with advice of counsel, concluded that inasmuch as the accounting for such backfeed did not affect the operating incomes of either Baltimore Company on the one hand or Penn Water on the other, and as I recall it, because no other party was involved or interested—and this is from memory—it was concluded that we need not account for that energy for billing purposes, and I think no accounting of such backfeed on the bills of the companies has been carried on at least in the last five or six years, and I do not believe there has been any since the early 30's. But there has still been full recognition that that Article 6 in the 1927 contract was applicable.

[2420] Q. In connection with Exhibit 77, and more particularly the paragraph numbered 14 which is entitled, "Joint use of transmission facilities", will you describe the transmission facilities of Safe Harbor that are jointly used in connection with Exhibit 77?

THE WITNESS: May I have the question, please?

(Question read.)

THE WITNESS: I will refer to Exhibit 41.

Generally in the upper left-hand portion of Exhibit 41, there is shown the station layout of the Safe Harbor hydro plant, or station as it is called here, and designated in blue ink is the term Donegal Tap.

The facilities owned by Safe Harbor and operated by Safe Harbor are those between that 13 K. V. bus of the hydro station in heavy black through the transformers owned by Safe Harbor transforming the electric services from 13 K. V. to 66 K. V. and from those transformers up to the top of the hill above the [2421] plant, at which point they interconnect with the transmission facilities owned and operated by Penn Water.

When I refer to facilities I am, of course, referring only to the transformers, oil circuit breakers, and associated equipment and I have not included such things as meters and control, which are rather extensive and which are owned and operated by Safe Harbor in manipulating or controlling facilities owned by Penn Water.

Q. Have you finished your answer? A. Yes, sir.

MR. GOLDBERG: May I have the answer read, please?

(Answer read.)

By MR. GOLDBERG:

Q. When you say "facilities on top of the hill" you mean Manor sub-station, do you? A. Manor sub-station is at the top of the hill, but Safe Harbor owns what we refer to as the river span of the transmission line, including the first tower on top of the hill at which point interconnection is made with the facilities of Penn Water.

Q. Those spans are 220 K. V. spans? A. No, the ones I am referring to are 66 K. V. spans.

Q. There are several 220 K. V. spans? A. And Safe Harbor owns them, also, but they are not—

[2422] Q. Involved? A. —the transmission facilities referred to in paragraph 14 of Exhibit 77.

Q. In other words, the transmission facilities referred to in paragraph 14 of Exhibit 77 are the facilities you have described, including the 66 K. V. spans from the transformer pockets up to Tower No. 1, up to and including Tower No. 1, which is adjacent to the Manor sub-station. Is that right? A. I have forgotten about the Tower number, but it is including the first tower on the hill.

Q. Otherwise my statement is correct—is that right? A. That is correct.

Q. Other than the transmission facilities that you have described of Safe Harbor in connection with Exhibit 77 what are the other transmission facilities of Safe Harbor?

We have already mentioned the 220 K. V. spans. A. Yes.

Q. Are there others besides that? A. You mean other than those referred to in Exhibit 77?

Q. That is right. A. There are the 220 K. V. transformers stepping up from 13 K. V. to 220 K. V. We usually refer to those technically as transmission facilities. I don't know what the legal connotation may be. Safe Harbor also owns and operates the 13 K. V. single phase 25-cycle cable system from the frequency [2423] changer and single phase generator terminals in the Safe Harbor Fowerhouse in the tunnel through the hill to the Conestoga sub-station of Penn Water where connection is made to the single phase railroad bus of Penn Water.

I would consider those transmission facilities, again speaking from a technical sense.

I don't know whether the tremendous amount of cable, control cable, switches, metering, relays, etc. which are associated with the transmission facilities of Penn Water but which are owned and operated by Safe Harbor in the main control room at Safe Harbor, would be considered a portion of the transmission facilities. I think from a technical point of view I would say they were, because the Safe Harbor control room has two large control boards, a 25-cycle board and a 60-cycle board.

The 60-cycle board controls all of the transmission facilities of Safe Harbor to which I have just referred, including both the 220 K. V. and the 66 K. V. facilities, and the 25-cycle—I want to go back to 60-cycle facilities. They also control the transmission line facilities at Manor sub-station, and on the tap circuit, previously referred to as the Donegal Tap circuits owned by Penn Water, but which is used to control the tie-in facilities with Pennsylvania Power and Light, and again referred to in paragraph 14 of Exhibit 77.

[2424] Referring now to the 25-cycle control board, the entire board, with the exception of the two generators and

the one frequency changer panels, which make up perhaps less than 20 per cent of the control board, are devoted to the control of the transmission circuits of Penn Water and of the Pennsylvania Railroad Company at Conestoga substation, jointly owned by Penn Water and Pennsylvania Railroad. In addition there are several metering circuits provided by Safe Harbor in order that the Safe Harbor operating force may actually control the flow of power between the plants of Safe Harbor and Penn Water and those [of] Metropolitan Edison Company, Pennsylvania Power and Light Company and Philadelphia Electric Company over the railroad circuits, and it is the operating force at Safe Harbor which very largely controls the flow of power over these interconnected tie-lines.

The facilities were provided at Safe Harbor because of the large installation of capacity there and the fact that that capacity is frequently operated as the only reserve capacity on the system, which I referred to in my direct examination in connection with Exhibit 8, I believe, so that that operating group has a large part of the responsibility for the division of load between the Safe Harbor plant, which is to be furnished to the customers of Penn Water and Safe Harbor, and the load from Holtwood or from the other generating sources on the system, all of which I believe, [2425] might be considered as transmission facilities.

. . .

[2430] Q. Is voltage a part of the electric service? A. I would say the voltage was an attribute of electric [2431] service, yes.

Q. Is it required in connection with the electric service? A. Most certainly is, and if the voltage is not there, then the service is not there.

. . .

[2448] Q. And sometimes when special facilities are provided there is a special charge for it and sometimes it is

part of the demand and energy charge, isn't it? A. That is correct.

Q. Do you know of any contracts where frequency, voltage, phases and power factors are not mentioned? A. Offhand I don't recall except in the interchange agreements they are not always specified because reference is made in them to the furnishing of the services at a specified point that is usually referred to in some other firm power agreement, and therefore the repetition may not have been necessary.

Q. May not have been necessary? A. That is right, but it is implied just the same.

. . .

[2450] Q. So that when the contract speaks about the supply of power and energy or capacity and energy, necessarily included in those phrases are the other attributes you mentioned—voltage, point of delivery, phase, frequency, and the like—right? A. They may be assumed, but usually the contract at some point will specify what those other attributes must be.

Q. That is right. It will specify that the electric energy and capacity to be interchanged and supplied, is to have certain characteristics. Right? A. That is correct.

. . .

[2452] Q. Does Safe Harbor receive interchange energy under Exhibit 72 from Metropolitan Edison? A. Not directly.

Q. Does it do so indirectly? A. Well, when interchange energy is received by Penn Water alone as results from operations under Exhibit 72, or when such energy, capacity and other interchange services are received by Penn Water and Safe Harbor under the operations of [2453] Exhibits 76 and 77, such energy is available to those two companies in meeting their operating performances under its other contracts, and as I have testified in my direct we must and do consider Holtwood and Safe Harbor

not only as a single operating development but we must consider their operations together. That is why I referred to the energy being received by Holtwood and Safe Harbor directly under the operations of Exhibits 76 and 77, but being received by Safe Harbor indirectly under the operations of Exhibit 72.

. . .

[2458] Q. Does Safe Harbor make any payments for the Interchange energy it receives under Exhibit 72?

. . .

THE WITNESS: No.

By MR. GOLDBERG:

Q. Does Penn Water? A. Yes.

Q. Does Safe Harbor make any payments for the interchange energy it receives under Exhibits 76 and 77?

. . .

THE WITNESS: No.

By MR. GOLDBERG:

Q. Does Penn Water? A. Yes.

Q. Penn Water makes the payments under Exhibits 72, 76 and 77 to Metropolitan Edison and Pennsylvania Power and Light Company respectively—right? [2459] A. That is correct. The bills rendered to Pennsylvania Power and Light and Metropolitan and the payments made by Penn Water to Metropolitan Edison and Lancaster are made only by Penn Water.

Q. Does Safe Harbor reimburse Penn Water for any of those payments under Exhibits 72, 76 and 77?

. . .

THE WITNESS: There are no bills rendered or payments made between Safe Harbor and Penn Water for such transactions.

By MR. GOLDBERG:

Q. The fact of the matter is that the only payment between Penn Water and Safe Harbor are the payments made

by Penn Water under items E, F, and G—right? A. Those are the only payments made; yes, sir,—in dollars, of course.

Q. What do you mean when you tack on that last phrase, "In dollars"? A. We are speaking of bills. I am stating that when we are talking of bills we are talking about dollar transactions.

Q. Are payments made in any other form? A. Well, Penn Water receives energy and capacity from Safe Harbor, yes.

Q. Under items E, F, and G. A. Yes.

[2460] Q. And pays for it? A. Payments are rendered for it, yes, but not in proportion to the services received.

Q. All you mean by that is that Penn Water pays for one-third of Safe Harbor's capacity and energy output—right? A. Under "E", "F" and "G" Penn Water pays one-third of the revenues Safe Harbor expects to receive under "E", "F" and "G" in exchange for its entitlements.

Q. And you are saying that though it pays for one-third of its entitlements it does not necessarily receive that one-third. Is that right? A. That is right.

Q. That one-third may go to the Pennsylvania firm customers—is that right? A. Yes, sir.

Q. And when it goes to the Pennsylvania firm customers— A. Of Penn Water and Safe Harbor.

Q. I am not adding that. When it goes to the Pennsylvania firm customers, Philadelphia Electric, Pennsylvania Power and Light Company and Metropolitan Edison, those companies reimburse Penn Water for the energy they received—right? A. Those companies reimburse Penn Water for the electrical services rendered to them by Penn Water direct or by Penn Water and Safe Harbor, as the case may be.

Q. They pay only Penn Water—right? [2461] The accounting and billing is all done by Penn Water. Is that right? A. That is right.

Q. They pay only Penn Water. Is that right? A. Payments are made only to Penn Water.

Q. And Penn Water pays Safe Harbor only under the provisions of Items "E", "F" and "G"—right? A. All payments made by Penn Water to Safe Harbor are made under the provisions of Items "E", "F" and "G".

Q. And if Penn Water were not to receive any part of that one-third but instead three-thirds went down to Consolidated, Penn Water would nevertheless pay Safe Harbor for the one-third of its entitlements under Items "E", "F" and "G"—right? A. You are assuming no contractual changes, of course, but merely that under some conditions three-thirds might go to Baltimore?

Q. That is right. That is an assumption, three-thirds may not go. Let's assume that it does. A. Under those conditions Penn Water still makes payments to Safe Harbor equal to one-third of the total revenues to be received by Safe Harbor under "E", "F" and "G".

Q. Yes, and Consolidated reimburses Penn Water for all of that three-thirds under Items "H" and "I"—right? A. Under that assumption that would be correct.

[2463] Q. This is the fact, isn't it—that what Penn Water pays to Safe Harbor under Items "E", "F" and "G" is wholly independent of what Penn Water receives from Metropolitan Edison, Philadelphia Electric and Pennsylvania Power and Light Company—isn't that so? A. That is correct.

[2467] Q. What did you understand kilowatt-hour sales to mean when you were using that on Exhibit No. 9? A. I made it very clear from the footnote on Exhibit No. 9 that the revenues were the total revenues received including charges for all services rendered, and perhaps I should have said both electrical services and other transmission services rendered.

Q. Perhaps you should have said kilowatt-hour sales and other electric services? A. The kilowatt-hour sales, as shown there, was the accounting designation used in the Federal Power Commission reports wherein we do account for the energy, both the energy generated ourselves and the energy received from others. That is the energy recorded as being delivered to the firm power customers of Penn Water and Safe Harbor.

[2468] Q. Isn't it a fact that you prepared Exhibit No. 9 and thought it was perfectly proper to refer to it as kilowatt-hours sales because it represented delivery by Penn Water to the Pennsylvania customers of kilowatt-hours for compensation? A. Yes.

Q. And you thought it was perfectly proper to use that designation in connection with your technical explanation of electric services. Is that right?

THE WITNESS: Apparently that is a part of the transaction. I saw nothing wrong with it then. I don't think I see anything wrong with it now.

By MR. GOLDBERG:

Q. I don't, either.

Now, then, will you describe for us the sales of power and energy with all of those attributes that you have mentioned, voltage, frequency, and so forth, that are made by Penn Water on a firm power basis and on an exchange basis? A. May I have the question again, please?

[2469] (Question read.)

THE WITNESS: Under contracts identified as Exhibits 73, 74, 75, Penn Water and Safe Harbor provide services, some electrical services, some special facility services, to Philadelphia Electric Company at Coatesville. Some of those services originate in the hydroelectric plant of Holtwood. Some originate in the steam electric generating station at Holtwood. Some originate in the hydroelectric plant of Safe Harbor Water Power Corporation.

Those services are provided for Philadelphia Electric Company at Coatesville on the one hand directly over the transmission facilities from Holtwood and on the other hand over the generating and transmission facilities of Safe Harbor and the transmission facilities of Penn Water. Hence, to Coatesville.

The metering of the energy, the metering of the demand under those agreements is provided for at the Newlinville sub-station of the Philadelphia Electric Company at Coatesville. Although the services rendered under these contracts, Exhibits 73, 74, and 75, are rendered jointly by Penn Water and Safe Harbor, the accounting for the energy and the billing for the energy, demand and special facilities services are carried out by Penn Water acting for itself and for Safe Harbor. Under these contracts there are no interchange services. They are strictly firm power services.

There is provision for interchange in emergency services [2470] but to my recollection there has not been any accounting or billing for such services under those contracts since 1933.

. . .

Q. I wanted to interpose. When you were discussing the origin of the source of supply to the Philadelphia Electric Company, I recall that you mentioned the Safe Harbor hydro plant, the Holtwood hydro plant, and the steam electric plant. You overlooked mentioning steam electric plants of Pepco and Consolidated. Is that right? A. I suppose I also overlooked the generating facilities of Pennsylvania Power and Light and Metropolitan Edison Company from whom we also purchase interchange energy, and I guess I should have included those because from time to time we receive energy over our northern interconnections as well as from Baltimore, and they in turn from Washington, and to the extent that is received that is mixed with the services of the Safe Harbor and Holtwood supply.

Q. Does Penn Water submit a bill to Philadelphia Electric Company on behalf of Safe Harbor and itself? A. The bill is rendered by Penn Water for itself and for Safe Harbor, but Safe Harbor's name does not appear on the bill, I think. I am not certain of that.

• • •

[2475] Q. What you are telling me amounts to this: That although Consolidated at times furnishes substantial amounts which are used to supply the requirements of Philadelphia Electric by Penn Water, it is not fair to state that Consolidated renders service to Philadelphia Electric Company or that Penn Water renders a bill to Philadelphia Electric Company on behalf of itself and Consolidated because there is an agreement between Holtwood and Consolidated known as Items H and I whereunder Consolidated is reimbursed for that supply. Is that it?

• • •

THE WITNESS: I would like to make about five replies to that because I don't agree with the whole thing.

• • •

THE WITNESS: You referred to substantial amounts being furnished by Baltimore Company. If you refer to substantial in the sense that at some particular hour it is a large proportion, then I would agree. But if you are referring to substantial as being large in kilowatt-hours or large in percentage taken over a period of a week or a month or a year, I would not agree.

[2476] By MR. GOLDBERG:

Q. All right. Go on from there. A. You referred to the supply by Baltimore Company of large amounts used by Penn Water for its services to Philadelphia Electric Company.

Of course, I don't think I could agree with that inasmuch as when the energy is received by Penn Water it is impossible to earmark where that energy goes, or to say it

goes to Philadelphia Electric at Coatesville or to P. P. and L. or to the Pennsylvania Railroad. It is true that the services rendered by Baltimore to Penn Water are mixed with Penn Water and Safe Harbor's own services and the mixture after conversion perhaps in phase, perhaps in voltage, perhaps in frequency, then is used with Penn Water and Safe Harbor's own services in rendering service to the Philadelphia Electric Company at Coatesville.

Q. Go on from there.

Have you done this tracing job which enables you to say you cannot trace it? A. I have attempted to do a tracing job and cannot.

Q. You have not succeeded? A. I could make some hypothetical assumptions and take some proportionate figures, yes, but I don't know what energy goes to Philadelphia Electric because I cannot, to use an expression we frequently use, paint the [2477] kilowatt-hours.

Q. Or put bells on them? A. Or ribbons.

• • •
TRIAL EXAMINER: Read that last question again, please.

(Question read.)

THE WITNESS: I cannot answer that question because I don't believe I understand it.

Baltimore Company does not render any service, if I understand that question, to the Philadelphia Electric Company at [2478] Coatesville.

• • •
Q. As I understand it, you say that Safe Harbor and Penn Water jointly render electric service to Philadelphia Electric Company? A. Yes, sir.

Q. Do you say that because Safe Harbor happens to be named in the contract or do you say that because part of Safe Harbor's supply generation, find its way to Coatesville? A. I say it because it is a party to the contract,

[2479] furnishing of a service under a contract in a technical sense.

Q. Suppose Safe Harbor did not produce any electric energy which was used to meet the demands of Philadelphia Electric under the contracts which we have discussed as Exhibits 73, 74 and 75. Would you still say that the supply to the Philadelphia Electric Company is a joint supply by Penn Water and Safe Harbor? A. Technically it would not be a joint supply if Safe Harbor did not provide any of the services. I don't know what the legal connotations are.

Q. I see. You are not talking about the significance of naming them? A. Naming what?

Q. Naming Safe Harbor in the contract. When you spoke of joint supply you had in mind that Safe Harbor actually generates a certain amount of kilowatt-hours which are used to supply the requirements of Philadelphia Electric Company at Coatesville—is that right? A. Yes, I was.

[2481] Q. Isn't all of the supply that Safe Harbor furnishes under Items E, F, and G, isn't it furnished under Items E, F and G and paid for under that agreement?

THE WITNESS: May I have the question again, please?

(Question read.)

THE WITNESS: There are four questions there. All electrical services of Safe Harbor are not furnished under E, F, and G although all of the payments made to Safe Harbor for all of the services rendered to its several customers are paid for, the payments are computed and made in relation to and under the provisions of contract identified as items E, F, and G.

Q. You said that items E, F, and G do not cover all of the services rendered by Safe Harbor. What do they not cover? A. Do not cover the services rendered to the

Pennsylvania Railroad Company at Safe Harbor, services rendered to Pennsylvania Power and Light Company, jointly of course in [2482] the latter case with Penn Water and in the former case jointly with Baltimore, Potomac Electric Power Company, Penn Water and Safe Harbor.

It renders service to Philadelphia Electric Company at Coatesville under contract identified as Exhibits 73, 74 and 75.

Q. Are you finished? A. I think so. I think I covered them all. As well, of course, as the services rendered to Baltimore under E, F, and G.

Q. What is the Safe Harbor Company required to furnish the railroad that is not—specifically—that is not covered in items E, F, and G? A. Electric services.

Q. Such as? A. Capacity, energy, wattless, frequency, phase, voltage, special facilities.

Q. What special facilities? A. Railroad frequency changer, two single phase generators, cables to Conestoga Substation.

Q. You say those things are not covered under items E, F, and G. A. Not specifically, no. Payments are made under E, F, and G, but the services are not rendered under E, F, and G, are not supplied or provided under E, F, and G.

[2483] Q. Do you mean to tell me that the reimbursement for the railroad frequency changer, the cables, and the other facilities that you have mentioned are not involved in the computation of the payments to be made by Holtwood and Consolidated to Safe Harbor? A. Not at all. I said the services were not rendered all under E, F, and G. But I specifically stated in addition that all the payments Safe Harbor receives for services rendered, to whomever it may render, are made under the provisions of contracts E, F, and G.

Q. In other words, the provisions of E, F, and G are broad enough to include compensation for all services rendered by Safe Harbor.

MR. SPARKS: I think that is a legal question, if your Honor please, and calls for a legal conclusion.

MR. GOLDBERG: I want his understanding of it.

TRIAL EXAMINER: Objection overruled.

THE WITNESS: The contract is broad enough to cover the payments but it is not broad enough to cover the services, nor did it intend to.

. . .

[2491] Q. In view of the fact that Consolidated at times may be rendering joint service to Coatesville with Penn Water, do you know why it is not a named party to the agreement? A. I do not consider Baltimore ever renders joint service to the Pennsylvania customers of Penn Water and Safe Harbor. They are not named parties to the contract and they are not operated, they do not have an operating responsibility [2492] to those Pennsylvania customers as distinct from the legal obligation.

. . .

[2493] Q. From an operating point of view what does it mean, then, to say Baltimore Company is entitled to two-thirds and Holtwood Company is entitled to one-third. A. Just what it says, it has entitlement but not the services.

Q. You mean to tell me that from an operating viewpoint under Items "E", "F" and "G" Consolidated cannot demand that Safe Harbor supply it with two-thirds of its output? [2494] A. When you say "cannot demand" it seems to me that is a legal question, whether they can demand it or not. From an operating point of view it seems we ignore the question of whether or not they would or should or could get the entitlements. They are interested only in where the energy and the services go from a most economical operational viewpoint, and we are not interested from an operating point of view in what the obligations are, because entitlements from an operating point of view, and

not from a legal point of view, does not mean services. It may mean revenues instead of services.

Q. No, it means entitlements of capacity and energy, doesn't it? A. Entitlements, yes.

Q. It does not mean revenues, it means entitlements of capacity and energy. A. Entitlements from an engineering point of view can be either two-thirds—speaking of Baltimore Company because that was your question, I think—Baltimore is entitled to two-thirds of the capacity and energy, and, of course, other services of Safe Harbor. Now, that entitlement may be in the form of services or it may be in the form of revenues received for those services provided to others which Baltimore does not get, but to which they are entitled.

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[2495] Q. Let me see. If Consolidated is entitled to two-thirds, but its two-thirds go to Holtwood, which company uses it in turn to supply its Pennsylvania customers, Consolidated nevertheless pays Safe Harbor for that two-thirds, and under Items "H" and "I" receives the benefit of the revenues derived by Holtwood in the use of that electric supply. Is that right? A. From an accounting point of view that is right, from a billing point of view. You are speaking now of the energy and capacity and other services of Safe Harbor going to Penn Water for its sole use with its Pennsylvania customers, which I believe would only be Metropolitan Edison, because to all of the other customers, Safe Harbor and Penn Water, have joint responsibilities.

Q. I know what your view is on that. We have already [2496] discussed that partly this morning and partly this afternoon. And the reason why Consolidated might not at times receive that two-thirds is solely in connection with the operation of the pool to supply electric energy from the cheapest possible sources to the various points of deliveries? A. Not entirely, but that is the way the operations are carried out. You have on the one hand the opera-

tions of all the resources of Safe Harbor, Penn Water and Baltimore which are coordinated for maximum economy and utilization of resources.

You have, secondly, the requirements of Penn Water's and Safe Harbor's joint customers for which Safe Harbor and Penn Water have certain operating responsibilities.

You have also Penn Water's customer, Metropolitan Edison, to which Metropolitan has the sole operating responsibility.

. . .

And you have to consider them from an operating point of view of hour-by-hour and day-by-day and week-by-week planning and dispatching of services. You have to consider them from the operating responsibilities of the respective parties between Penn Water and Safe Harbor with the Pennsylvania customers on the one hand, Penn Water and Baltimore on the other hand. You have to consider the entitlements of Baltimore and Penn Water under "E", "F" and "G". So you have the operating [2497] responsibilities, you have the accounting for the flow of energy, and, of course, you have the legal responsibilities which we have not talked about.

By MR. GOLDBERG:

Q. Isn't it a fact that Consolidated controls the disposition of its entitlements so that it may derive from the disposition of its entitlements the greatest amount of revenues, and necessarily benefit? A. What do you mean by the first part of your question?

Q. Consolidated directs where its entitlements are to be utilized if it is not going to Consolidated? A. When do you mean it directs? When it approves contracts or when it jointly with Penn Water plans on the operation of the system from day to day and hour by hour?

Q. When the operations of the system are planned. A. That is not the sole responsibility of Baltimore by any means. That is a joint responsibility of Baltimore and

Penn Water. That is the reason the operating committee was set up, to provide for that very thing.

. . .

[2498] Q. With respect to the entitlement of Consolidated under Items "E", "F" and "G", and under Items "H" and "I", are you saying that Consolidated does not determine the disposition of those entitlements? A. I am afraid we are confusing the entitlements on a contractual basis and the entitlements on an hour-by-hour dispatching basis. I thought we were talking about entitlements up until a few minutes ago on a contractual basis. By "contractual" I mean the operating responsibilities.

As far as those entitlements are concerned, Baltimore is entitled, under "E", "F" and "G", to two-thirds of the power and energy and other services of Safe Harbor, but it does not always, in fact it very seldom, gets those two-thirds in the form of services, but in lieu thereof does receive the revenues paid for those services to which Baltimore is entitled.

[2499] Q. And when the electric energy to which Baltimore would otherwise be entitled is used to supply other customers on the system, the customers of Penn Water, for instance, Consolidated's interest lies in the disposition of that electric energy at the sources where it derives the greatest amount of revenues? A. It is a joint responsibility for that, Penn Water and Baltimore Company having a joint responsibility and equal joint responsibility for that, although the ultimate dollar benefit does flow under H and I and E, F and G, which you have to take together, to the Baltimore Company.

Q. The Baltimore Company does not alone decide on the disposition of that energy—is that correct? A. That is correct.

Q. You say that from an operational standpoint. A. That is right.

. . .

[2500] By Mr. GOLDBERG:

Q. The discussion we have been having flowed from your description of the sales of firm power and energy under Exhibits 73, 74 and 75, to Philadelphia Electric Company at Coatesville. What other sales of firm power and energy are made by Penn Water? A. Well, again we have the word "sales" to consider, but Penn Water and Safe Harbor furnish firm power services to the Pennsylvania Power and Light under contracts identified as Exhibits 76 and 77, and it is evident from knowledge of the operations and the flow of power in the general sense in which we speak of it that a large part, if not the preponderance of the services rendered to Lancaster under these P. P. and L. contracts, 76 and 77, are rendered by Safe Harbor, but both companies, from an operating point of view, are responsible for the firm power services. By "both companies" I mean Safe Harbor and Penn Water.

Q. If Safe Harbor were not named in the contract could you still say from an operating viewpoint they are joint services? A. Yes, I wouldn't say they were rendering joint services but I would say the services were of a joint nature because it is necessary to take the two hydro plants and the Holtwood steam plant and consider them as a single project. They are operated that way. They were conceived that way, and [2501] the services are rendered as though they were one.

Q. May we in this case include the Consolidated Steam Electric plants, too, as rendering joint services to Lancaster? A. No.

Q. Is that because you do not believe that the electric energy at times comes up from Consolidated and flows to Lancaster? A. No.

Q. Is it because there are no operating responsibilities of Consolidated? A. That is one reason.

Q. Where do you derive these operating responsibilities? A. From the contracts on the one hand and from the method of operation on the other.

Q. Suppose there are none in the contract? Could there be a rendering of joint service from an operating standpoint? A. There could be; there wouldn't necessarily have to be.

Q. Suppose Safe Harbor were not named in Exhibits 76 and 77? Would you say they were joint services from an operating standpoint? A. I would.

Q. Would you say that with respect to Consolidated? A. No.

[2502] Q. They both would be on an equal footing then, wouldn't they? A. No.

Q. Why not? A. Because the operating responsibilities of the two hydro companies have to be taken together.

Q. But you wouldn't— A. Speaking now of the operating responsibilities as distinct from the contractual responsibilities, legal responsibilities.

Q. We don't have any contractual responsibilities so you must speak of operating responsibilities that are not derived from the contract. Right? A. That is right.

Q. Where, from what source do you impose an operating responsibility upon Safe Harbor in the absence of an agreement? A. Because a lot of the switching equipment relating to the supply of Pennsylvania Power and Light is operated and controlled by the Safe Harbor operating personnel.

Q. Is that operated and controlled by the Safe Harbor personnel in connection with any contractual provisions you know of? A. No, I don't think so. The fact is they are.

Q. Suppose Safe Harbor tomorrow said, "We are not going [2503] to operate the switching equipment for you any more." Is there anything Høltwood could do about it? A. Safe Harbor is a party to the P. P. and L. contracts, items 76 and 77 right now.

Q. I want to eliminate that from our discussion. Assuming that tomorrow they are not named in the contract, Safe Harbor says, "We are tired of working the switching

equipment for you. We are just not going to do it any more."

Is there anything Holtwood could do about it? A. Holtwood would have to approve their being eliminated from the contract. I assume that is a legal matter, though.

Q. Holtwood would have to approve Safe Harbor's being eliminated from Exhibits 76 and 77? A. I would think so.

Q. You mean Holtwood has no freedom of action?

MR. SPARKS: You mean Safe Harbor?

By MR. GOLDBERG:

Q. You mean Safe Harbor has no freedom of action with respect to that contract? A. We are not getting into a legal field, but companies do not take their responsibilities under a contract lightly.

Q. Let's assume that Safe Harbor is eliminated from the contract. A. In what manner?

Q. They are removed. [2504] A. How?

Q. The same way you removed them from the Metropolitan Edison contract. A. By writing a new contract?

Q. If you wish. A. All right.

Q. Or by amending the existing contract? A. With the consent of all parties.

Q. I will let you assume that for the time being. A. All right.

Q. Where would Safe Harbor have any operating responsibilities for the operations of any of Holtwood's equipment? A. Their operating responsibilities are there, and if Safe Harbor said, "We will not operate them any longer", it would be up to Holtwood to make other provisions, electrically, mechanically, to do that work themselves.

Q. In other words, you say that there are no provisions that you know of which would require Safe Harbor to continue working that equipment. Is that right? A. You have assumed that they no longer are parties to contracts 76 and 77.

Q. That is right, are no longer parties. A. I don't recall any other obligations. There may be some.

[2505] Q. Referring to Exhibits 76 and 77, where are these obligations that Safe Harbor has for the operation of Holtwood equipment? A. I didn't say there were any. I said they were a named party to the contract.

Q. I was under the impression that the obligations they had for the operation of the equipment were in Exhibits 76 and 77. A. I am sorry. I didn't intend to give you that impression.

Q. So we cannot look to Exhibits 76 and 77, even though they are named parties, for any obligations which require Safe Harbor to operate Holtwood's equipment. Is that right? A. It isn't Holtwood's equipment. It is its own equipment. It may be P. P. and L.'s equipment. We are talking about the controls I talked about a while ago.

Q. Switching equipment? A. In part they are Holtwood's equipment operated from the Safe Harbor plant by the Safe Harbor personnel. That is right.

Q. Now, does Safe Harbor operate Holtwood's equipment because of anything in Exhibits 76 and 77? A. I don't recall any specific provisions. I am looking to see if there are. There may be. There is certainly a very definite implication in Article Roman numeral VIII of [2506] the contract marked for identification as Exhibit 76.

Q. What is that statement you refer to from which you derive some sort of an implication? A. The various provisions of this renewal agreement are agreed to between the parties, to which Safe Harbor is a party, with the understanding that receiving companies Lancaster system will be so connected, and will be operated in parallel with other systems, and that each of the parties hereto will arrange and operate its facilities in such manner as may be necessary for such parallel operation.

Q. Now, then, under what agreement has that arrangement been made between Holtwood and Consolidated? A. I don't understand.

Q. You just indicated that Holtwood and Safe Harbor have to make arrangements about the operation of facilities to carry out the requirements of the agreement. A. It is a mutual matter. All three parties agree to that.

Q. Where is the agreement between Safe Harbor and Holtwood for the operation by Safe Harbor of Holtwood's equipment? A. I don't know of any. I don't think there needs be as long as Safe Harbor is a party to the contract.

Q. Is it items E, F, and G?

THE WITNESS: May I have the question again?
[2507] (Question read.)

THE WITNESS: I don't think so. Of course, under items E, F, and G, Safe Harbor receives revenue to cover its expenses in such operation and its return on the investments provided for such matters. But that is not what we were talking about. We were talking about the operating responsibilities and not the revenues therefor.

. . .

Q. And we were hunting for some contract that you could refer to which shows the operating responsibilities. Isn't that so? A. I think that is right.

Q. We have not been able to find one yet. A. I don't think there needs to be.

Q. At least we have not been able to find one? A. So long as Safe Harbor is a party I don't think we need one. But, again, from a legal point of view of course I am not considering that matter.

Q. In connection with Exhibit 71, did Safe Harbor operate any of Holtwood's equipment? A. No.

Q. It didn't have to? It had no operating responsibilities? A. It had certain operating responsibilities; yes.

Q. Doesn't have them any more today, does it?
[2508] A. Yes.

Q. It has them today even though they are not a named party in Exhibit 72? A. That is right.

Q. Have the same ones they had under Exhibit 71. Isn't that right? A. No, I wouldn't say they are the same ones.

Q. How do they differ? First tell us the operating responsibilities under Exhibit 71 and then tell us the operating responsibilities under Exhibit 72. A. Under Exhibit 71 Safe Harbor had operating responsibilities for power and energy as well as for the operation of certain facilities, or for the manipulation of certain of Safe Harbor's facilities in connection with the operating responsibilities of Exhibit 71.

As respects Exhibit 72, Safe Harbor is not a named party, but the contract, Exhibit 72, between Penn Water and Metropolitan Edison Company very specifically referred to the services that must in part be provided by Safe Harbor. They are not quite the same in some respects, but they are still operating responsibilities.

As for the operation of facilities or the manipulation of facilities in connection with contracts Exhibits 71 and 72, I don't think there is any difference.

Q. Now you say that Safe Harbor still has responsibilities [2509] under Exhibit 72. Yet we know they were not named. Is that right? A. That is correct.

Q. How do they get paid for carrying out those responsibilities? A. Under E, F, and G.

Q. How did they get paid for those operating responsibilities when Exhibit 71 was in existence? A. Under E, F, and G.

[2517] Q. Does Safe Harbor receive any revenues for the sale of electric energy capacity and use of facilities, whether special facilities or otherwise, other than the amounts paid to it by Penn Water and Consolidated under items E, F, and G? A. No.

Q. Isn't it correct to say that the investments made by Safe Harbor in all facilities owned by it, and the operating expenses incurred by Safe Harbor in connection with the operations of those facilities, are included as a basis for

[2518] the bills rendered by Safe Harbor to Consolidated and Penn Water under items E, F, and G, copies of which bills are in this proceeding as Exhibit 17? A. I think you may have two questions in there, Mr. Goldberg. I should like to consider them separately if I may have the reporter read them back.

MR. GOLDBERG: Yes.

(Question read.)

THE WITNESS: As we discussed yesterday, Safe Harbor may make, and has made, investments for facilities under contracts other than those identified as items E, F, and G, but the specified return on such investments, as well as the operating expenses incurred in connection with such facilities, are a part of the computations used to derive the total revenues receivable by Safe Harbor under its contract identified as items E, F, and G.

By MR. GOLDBERG:

Q. Now, with reference to your statement that Safe Harbor may make and has made investments for facilities under contracts other than the contracts identified as items E, F, and G in this proceeding, you there had reference, did you not, to your testimony of yesterday relating to the installation of the additional 25-cycle single phase unit which was required to meet the increased loads of the Pennsylvania Railroad. Is that right? [2519] A. In part. But I also have reference to the installation by Safe Harbor of the frequency changer units for the conversion of three-phase 60-cycle electric services to single phase 25-cycle electric services in conjunction with its services rendered to the Pennsylvania Railroad Company jointly with others, and I also had reference to the other investments made in connection with such services to the railroad, such as the cable system, tunnel, structures, etc., that would not otherwise have been required.

I also think I should refer to those investments in facilities made by Safe Harbor Company as necessary in